

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 ERNESTO LOPEZ,

No. C 11-5542 JSC

11 Plaintiff,

**REPORT AND RECOMMENDATION
REGARDING PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS**

12 v.

13 WACHOVIA MORTGAGE FSB, f.k.a.
WORLD SAVINGS BANK, et al.,14 Defendants.
15 _____/16 Plaintiff Ernesto Lopez, proceeding pro se, filed this civil action alleging diversity
17 jurisdiction under 28 U.S.C. § 1332 against Defendants Wachovia Mortgage FSB and Cal-
18 Western Reconveyance Corporation, seeking to enjoin a foreclosure action for real property
19 located at 9651 Saren Ct., Elk Grove, California 95624.20 Plaintiff filed an application to proceed in forma pauperis with his complaint. The
21 Court has reviewed the application and finds that Plaintiff is indigent. Therefore, the Court
22 recommends that Plaintiff's in forma pauperis application be granted.23 However, the Court has reviewed Plaintiff's complaint and finds that the Court lacks
24 subject matter jurisdiction over this action because there is not complete diversity among the
25 parties. See Fed. R. Civ. P. 12(h)(3). Plaintiff is a resident of California. (Dkt. No. 1 ¶ 3).
26 Defendant Wachovia Mortgage FSB, now Wells Fargo Bank, N.A., is a citizen of South
27 Dakota, which has its principal place of business in San Francisco, California. See
28 Guterman v. Wachovia Mortg., 2011 WL 2633167, at *1 (C.D. Cal. Mar. 31, 2011)

1 (discussing Wachovia Mortgage, now Wells Fargo Bank's citizenship). Defendant Cal-
2 Western Reconveyance Corporation is a California citizen. See Latino v. Wells Fargo Bank,
3 N.A., No. 11-2037, 2011 WL 4928880, at *2 (E.D. Cal. Oct. 17, 2011) (wherein Cal-Western
4 Corporation admitted that it was a California citizen).

5 Jurisdiction founded on diversity "requires that the parties be in complete diversity
6 and the amount in controversy exceed \$75,000." Matheson v. Progressive Specialty Ins. Co.,
7 319 F.3d 1089, 1090 (9th Cir. 2003). Complete diversity means that "each of the plaintiffs
8 must be a citizen of a different state than each of the defendants." Allstate Ins. Co. v.
9 Hughes, 358 F.3d 1089, 1095 (9th Cir. 2004). Here, Plaintiff and at least one of the
10 Defendants – Cal-Western Reconveyance Corporation – are citizens of California. The
11 Court therefore lacks subject matter jurisdiction over this action and recommends dismissing
12 Plaintiff's complaint without prejudice.

13 The Court notes that it may no longer have a proper mailing address for Plaintiff as
14 mail sent to his last known address as recorded on the docket was returned as undeliverable.
15 (Dkt. No. 6). As a result, no consent to the jurisdiction of a magistrate judge can be obtained
16 and this matter must be reassigned.

17 **IT IS SO ORDERED.**

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19 Dated: December 12, 2011

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21 JACQUELINE SCOTT CORLEY
22 UNITED STATES MAGISTRATE JUDGE

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